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ESSAY

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ON THE

HEREDITARY AND INDEFEASIBLE RIGHT

OF

Kings.

COMPOSED IN THE YEAR 1745,

BY

LORD KAMES.

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HEREDITARY & INDEFEASIBLE RIGHT

OF

KINGS.

THE hereditary-indefeasible right of kings, and passive obedience and non-resistance its genuine offspring, are doctrines which of late have made a great noise in Europe, and particularly in this island.

WHEN we consider man, abstracted from all positive engagements, we find nothing in his nature, or in his situation, to subject him to the power of any, his creator and his parents excepted. The parental power is at an end when children are grown up, and can provide for themselves. At any rate the parental power cannot subsist longer than the life of the parents; for it is not a matter of property to be transmitted by succession, since it depends upon personal circumstances. And supposing it a subject to be taken by succession, it must descend to all the children equally, at least to all the sons equally; for primo-

geniture, 'tis certain, is not a right of the law of nature, but a consequence only of the feudal law. Hence it is a principle embraced by the gravest writers, that all mankind are born free, and independent of one another.

MAN indeed is fitted for society. His wants prompt him to it, and his inclinations render it agreeable. Accordingly we find mankind almost every where parcelled out into societies, which have been originally formed by accidental circumstances, more or less extensive. A society of any extent cannot be without government. The members must have laws to determine their differences, and they must have rulers to put their laws in execution. At the same time, we find the constitutions of different states, with regard to government, almost as various as are the sentiments of men concerning it: So that tho' government be necessary to the well-being of society, yet from this circumstance alone, were we to look no further back, we may conclude no particular form to be necessary, but the effect of choice, or perhaps in some measure of accident.

LET us trace this matter further, because it is of importance. Man is a shy animal, and in

his original state rather averſe to ſociety. In that ſtate his wants were few, and eaſily ſupplied ; therefore we may readily conclude, that while acorns were the food of man, and water his drink, there was neither uſe nor appetite for ſociety. Accordingly we find mankind originally in every corner of the earth living in ſcattered habitations, with little intercourſe, except among members of the ſame family. The culture of corn laid the foundation of a more extenſive intercourſe, becauſe thereby mutual aſſiſtance became neceſſary. When arts were invented, and induſtry increaſed, it was found convenient to herd together in towns and villages. From this cloſſer connection one evil ſprung, oppoſition of intereſts, formerly rare ; which at firſt was the occaſion of quarrels and bloodſhed, and afterwards of frequent appeals to men of weight and probity. In time the neceſſity of fixed judges to determine differences being diſcovered, the election of theſe judges, which could not otherways be than popular, was the firſt ſtep to government. The chief magiſtrate therefore was originally no more but the chief judge, whoſe powers were gradually extended, as caſes occurred which required the interpoſition of a ſuperior governor. War introduced Sla-

very, as it subjected those taken in battle to the arbitrary will of their conquerors ; and absolute power was too desirable an acquisition to be the perquisite of subjects only. The chief magistrate, however repugnant it is to the nature of his office, did often grasp at it : And history informs us, that the chief magistrate, in different societies, has been often but too successful. In a word, absolute independence and absolute power are the two extremes ; and the latter, at least so far as concerns sovereignty, could never have been introduced, but by passing through all the intermediate degrees.

GOVERNMENT therefore is one of the arts which necessity has suggested, which time and experience have ripened, and which must be perpetually subject to further improvements. For government, like all other arts, being invented for the good of mankind, it must be the privilege of every society to improve upon it, as well as upon manufactures or husbandry. No particular form therefore can be necessary, as no particular form is preferable to another, unless so far as it has a greater tendency to promote its end, the good of the society. Comparing democracy, aristocracy, and monarchy together, this is their common standard.

THERE is a people inhabiting the earth who are not left to the choice of their governors, but are by nature subjected to monarchy. In every society there is a royal family, of a different species from the other members. Every monarch is born with marks of royalty, of a peculiar shape, and with superior beauty. We may suppose that the excellencies of the mind are not inferior to those of the body; and no wonder when this is the case, that perfect obedience is given through all the state, and that their monarch's will is their only law.---- There the parts are justly distributed, the sovereign framed for command, as the subjects for obedience, each in their several capacities equally contributing to the only end of government, the well-being of the society. Here there can be no stretching of prerogative on the one hand, no resistance nor even murmurs on the other. The monarch, taught by nature that the sovereign power is a trust which ought not to be abused, has no desire but to promote the public welfare. The people, taught by nature that passive obedience and non-resistance are the only means to promote their happiness, implicitly submit themselves to their monarch's will.

WERE mankind so framed, for of insects we have been speaking, these gentlemen would have reason on their side who declare so strongly for indefeasible-hereditary right, and the reciprocal duty of passive obedience and non-resistance: Were our royal family, like that of the bees, distinguished from the mass of the people by superior excellencies, whether of the mind or body, were they unerringly prompted by nature to exercise their power for the welfare of the society, blind obedience to their will would be a virtue. But when we trust with sovereign power one of the common stamp of mankind, who has by nature no marks of royalty, and who perhaps by nature is not fitted for command, the absurdity is great to maintain that this person ought to be under no controul, and that we ought to continue to trust him, after repeated instances of his betraying the trust reposed in him.

I HAVE no occasion to consider whether conquest be a good title by the law of nature to acquire the absolute dominion of a state, as in Turkey, where the Grand Signior is supposed to be the lord of the manor, and all the people his slaves. This is not government, the characteristic of which is trust reposed in one

for the good of the whole. It is like a private estate, which may be disposed of by the proprietor without controul, and applied for his own purposes. It cannot be pretended that the king of Britain has his right by conquest, and therefore no support can be drawn to the argument from that quarter.

THE scheme, it must be yielded, is so far consistent, that if we suppose the king's right to be indefeasible, and that he cannot be deprived of his authority however much his measures swerve from the rules of good government, it must follow, that the people are tied to passive obedience and non-resistance, as there is no medium betwixt resistance and obedience. But where is the foundation of the indefeasible right of the king, more than of any other officer of the state? Does it lie in the name? One should scarce think so, when the name is indifferently applied to governors who have very little power, as well as to those whose power is the most extensive.

It cannot lie in the nature of the office, which being a trust, is undoubtedly forfeitable upon mal-administration. It will perhaps be said to lie in the constitution of our govern-

ment. So far from it, that no man is bound to obey the king's commands, unless delivered in a certain form prescribed by law. And even in France, supposing it an absolute monarchy, without any constitutional check upon the king's actions, the king's power is notwithstanding limited. There cannot be such a thing in nature as for a people voluntarily to surrender their liberties to the arbitrary will of any man. The act would be void as inconsistent with the great law of nature, *salus populi suprema lex*.

But the favourers of this doctrine when beat out of these entrenchments, have a retreat which they suppose impregnable. They allow at last that the king may do wrong, by betraying the trust reposed in him. But then they maintain, that a king having no superior on earth can have no proper judge of his actions but God alone, from whom his power flows, and therefore is accountable to the Almighty only. This is a fortress built upon sand. All power no doubt is from God, natural and legal, for he is the creator and upholder of all things. But it follows from this, instead of being contradictory to it, that every sort of power is limited by the opposition of other powers, na-

tural or legal, which are equally from God with the power resisted. Perhaps they mean that every king has his commission from the Almighty, and not from the people. History alone may suffice to inform us, that this cannot be, when there have existed so many kings unworthy of command. But supposing the fact, it does not follow that this commission is unlimited. On the contrary it must be limited ; for who can patronize so impious a doctrine as that God should give a direct commission to any being to plague and persecute mankind, unless for their sins ? The voice of nature is the voice of God ; and it is a fixed principle in the law of nature, that where there is no common judge to appeal to, the party injured may do himself justice. The laws are superior to the king, and these he must be judged by. And supposing an absolute government in the strictest sense, where the king's will is law, yet there is one law above him. If his actions generally tend to destruction instead of government, the people, who have no judge to appeal to, may lawfully do themselves right. *Salus populi est suprema lex.*

But after all, where is the necessity of God's extraordinary interposition by granting his im-

mediate commission to kings, when in other matters he chuses to govern the world by second causes and ordinary means? Why should we suppose, that mankind are deprived of their natural privilege of chusing their first magistrate, more than of chusing those that are subordinate? Where is this commission recorded? Is it given to all rulers who have the name of king, or are some nations peculiarly honoured? Is it given to all sovereigns in general, whether honoured with the name of king or not? Had all the crown-vassals in France, dukes, earls, barons, this commission, who usurped, and, for many ages, possessed a sort of sovereignty within their own territories? These are puzzling questions, and it would require a most express revelation to put an end to the doubts that arise from them. The legislative power, one should imagine, is of a superior rank to that of the king, because that power gives laws to the king; yet no peculiar interposition of providence is pretended in its behalf. This body is left to be modelled by choice or by accident. The government of the world is after this manner carried on; and yet nothing happens, we may presume, contradictory to the original plan of providence. Why then a peculiar providence in behalf of kings, or an im-

mediate revelation, when there appears to be no necessity? We cannot, without impiety, admit of the supposition, when, so far as weak man can conjecture about the operations of the Almighty, he never interposes by extraordinary means, unless where the ordinary dispensations of providence prove insufficient to answer his purposes: We may therefore conclude, with the highest degree of assurance, that kings have no other commission from God but what every magistrate has, supreme and subordinate, who is legally elected according to the standing laws of the society to which he belongs.

BUT doubts and difficulties multiply upon us. Were all the nations pointed out by an express revelation who, like the Jews of old, are to be governed by magistrates of God's express appointment; were all the families pointed out who are to bear his commission, the revelation would still be imperfect. It is not enough to point out the family; the rules of succession must also be ascertained, that there be no dispute about the particular persons who are to enjoy this hereditary-indefeasible right. Here, without a new revelation, we are left

in a great measure at an uncertainty; for, are we to follow the rules of England or France? Are we to be guided by the law as at present established, or as it was three centuries ago? Whatever rules are followed, we must see that they are in a great measure arbitrary, the offspring of accident, or of the slenderest feelings of the imagination, and established by custom only. Has not this a strong appearance of leaving to every nation the choice of their own chief magistrates? Kings were at first generally chosen for life. It crept into practice to make all public offices hereditary; and so the sovereign power has generally come to be hereditary, partly from the bent of the people, and partly to avoid the inconveniencies which elective monarchy is subjected to. But after what manner is this hereditary right of kings carried on? Not by any universal law, expressly revealed or wrought into the nature of man; so far from it, that the rules of succession are different in every different country, established by custom alone, or, in other words, by the consent of the people. In France, for example, the females are totally excluded. Have females by the appointment of the Almighty this indefeasible right of succession? If they have,

France for many ages has been in a damnable error. If not, the load of the guilt must lie upon England, and upon many other countries who admit of female succession. In my apprehension, this consequence cannot be evaded, otherways than by fairly acknowledging that God, in this matter, as well as in others, works by second causes without any direct interposition, leaving every nation to be governed by laws of their own appointment. And indeed nothing looks liker a contradiction than to suppose that hereditary monarchy is the appointment of the Almighty, and that he has bestowed upon every heir an indefeasible right, not to be dispensed with upon any occasion whatever, without pointing out, by infallible marks, the persons who are to enjoy this extraordinary privilege ; commanding us, under the pain of damnation, to give entire submission to persons, as rulers appointed by him, without revealing who these persons are.

ANOTHER inference may be drawn from this doubtfulness of the law of succession. It is a self-evident proposition, that no right can be stronger than the title upon which it is founded. No title is more slender, in most instances,

than that of succession. How then can it be maintained, that the hereditary right of kings is indefeasible, when the title upon which the right is founded is so weak and so arbitrary. I think we may with certainty conclude, that such a right must, upon every occasion, give place to the primary rights of nature, such as tend to our preservation and well-being; and therefore that any particular heir may be safely set aside, when he becomes dangerous to the society. For this is assuredly the voice of God, that in every conflict the weaker right must yield to the stronger. Nay we may go one step further, that if the good of the society can be more promoted by a different form of government, hereditary right may be laid aside altogether without any crime; since the good of the society is an object of much greater importance than the right of any particular family can be.

TOUCHING the family of Stuart, no right has a less air of divine authority than what they had to the crown of Britain. To look no further back than to the competition betwixt Bruce and Baliol, which in these days appeared and truly was an intricate affair: was Baliol a king

by divine appointment, when he was acknowledged and submitted to, in consequence of an award given by Edward of England, who plainly manifested, by the whole course of his proceedings, that he was more swayed by political considerations than by justice and equity? Unhappy is the condition of that people who, under the pain of damnation, must yield passive obedience and non-resistance to a monarch, and yet have no better authority to direct their duty than such an award. It will be said, that the merits of the cause were with Baliol. But how the patrons of the divine right of kings should come to a certainty in this matter, I'm at a loss to understand. For not to mention the pretensions of his competitor Bruce, it is perhaps not extremely clear that a female has any divine right to a crown; at least, there is no instance of this amongst the Jews. And if females are admitted, I cannot see why the kingdom ought not to be split amongst female heirs, as well as a private estate. If right to a crown be considered as a matter of property, there certainly ought to be no difference. But laying aside all difficulties, and supposing Baliol's right of primogeniture to be invincibly good, 'tis plain Robert Bruce could have

no divine right, nor can the Stuarts have a divine right who derive their right from him. It is but a mean subterfuge, that none of Baliol's race appear to claim the crown. Will it be said, that this nation continued in an obstinate course of rebellion against the king of heaven, so long as any of Baliol's race existed? How do we know they do not at present exist? It is our indispensable duty to search for the king whom God has given us thro' every corner of the earth. And 'tis equally our duty to refuse our obedience to an usurper; and he must be so, who has not a hereditary right, and consequently is not of God's appointment. Let us keep in view, that prescription, positive or negative, can avail nothing, which has no other foundation but universal consent, implied from a long acquiescence.

THE asserters of this divine right dare not yield that Baliol forfeited the crown of Scotland, by acknowledging himself to be the king of England's vassal; for this would be justifying the late revolution in every point. Making an independent kingdom a fief of another sovereignty, is not more subversive of the constitution, than the measures are which were pursued by James

VII. during the whole course of his reign. And if the people of Scotland could lawfully judge that Baliol had subverted the constitution, and upon that judgment transfer the crown to another, the people of Britain had the same title to give judgment against James VII. and to declare that he had forfeited the crown.

WITH regard to England, the pretext of a divine right is still more lame, if possible. William the conqueror was a bastard, and could have no divine right to the dukedom of Normandy; nor did he himself pretend any other right to the crown of England, than by the testament of Edward the confessor. But supposing him to have conquered England, which will not be readily yielded, he certainly did not conquer his Norman subjects who came over with him to England, and from whom, for ought we know, a great part of the nation are descended. The Stuarts therefore who have no other claim to the crown of England, but by a female connection with the race of William the conqueror, cannot, with any shadow of reason, insist upon their beloved doctrine of a divine right, so far as concerns the English, who are of Norman extraction.

ON the whole, supposing the hereditary right of kings to be the appointment of God, indefeasible and indispensable, the following points ought to be ascertained : 1. Whether this law be universal, to take place over the whole earth, or if it be limited to certain nations, and what these nations are. 2. To what particular families does this divine right belong, who are thus made superior to the rest of mankind. 3. The rules of succession, which concern these particular families, ought to be distinct and perspicuous, so as to procure a perfect agreement amongst mankind, as about the primary laws of nature. 4. These rules ought to be wrought into our nature, and the transgression of them attended with the strongest sense of immorality, like treachery or murder. Were these points thoroughly cleared, the scheme might be consistent ; but as it stands, it is attended with doubts and darkness, to lead every honest heart who espouses it into endless perplexities.

MODERN histories are full of the evils occasioned by disputed successions ; they are still fuller of the evils occasioned by contests about the king's prerogative. There can be no moderation in such controversies, where God Almighty

ty is made a party, and every person called impious who takes the opposite side. Hereby it comes, that this doctrine of the hereditary indefeasible right of kings seldom fails to break the peace of society, to foster inveterate enmities, and to be the source of endless wars ; of which, were there no other evidence, the present times afford a deplorable instance. So that, if we are to give any parent to this doctrine other than blind enthusiasm, we can never ascribe it to a good being. And indeed if there is an invisible power a greater enemy to mankind than another, he could not possibly insfil into us a more poisonous principle. Plague and famine are nothing to it.

BUT, tho' I have been deservedly severe upon the doctrine, I would not be understood to pass the same censure upon its votaries. I am sensible the further removed a tenet is from truth, the difficulty of conversion is proportionally great. 'Tis like love bestowed upon an ugly woman, which is observed to be ever without bounds. The Jacobites, such as are not of a desperate fortune, certainly deserve compassion, even while they are laying waste their country by intestine commotions. They

can have no other motive but principle, when they venture their lives and their fortunes in the service of their idol prince, as their prospect of success can never balance the hazard. What pity is it they were not employed in a better cause. But if nothing else will open their eyes, ought it not to have some weight, that there is nothing more repugnant to the laws which must govern all societies, than for any single man, or set of men, to force their opinion upon the majority. How would they relish the behaviour of a member of their own parliament, who should endeavour by force of arms to oblige the whole body to submit to his sentiment? Or how would they relish it, that a body of men should rise in arms upon no better pretext than the procuring justice to a friend whom they suppose to be unjustly condemned by the whole body of judges? Is it not an excuse commonly given by banditti for robbing on the highway, that they are but making reprisals upon account of goods unjustly wrested from them by authority of law? Yet this is precisely the present case. King James was set aside by the authority of the nation, *i. e.* by the act of the majority, who from

the very nature of society, must be the ultimate judges, in all matters which concern their preservation and well-being. Perhaps he was unjustly condemned. Be it so for argument's sake. But an ultimate judgment must lie somewhere, without further appeal. It must be a fundamental law in all societies to acquiesce in this ultimate judgment, right or wrong, without which concord cannot be preserved but for a moment. No honest remedy after this can remain, but to desert the society and to join some other, where the rules of justice are supposed to be better observed. Can it be thought that the right of any man in a society, supposing him to be a chief magistrate, trusted with the greatest powers, is superior to the fundamental laws of the society whence he derives this right? It is an absurdity, the same as that a part is greater than the whole. It were to be wished, that gentlemen would seriously consider this matter, who are so strenuous for the claim of an abdicated king, and who would embroil heaven and earth to compass the restoration of the family. And would they but allow themselves to think with any degree of coolness, they would soon be convinced, that

the peace of society is an object of greater importance than the right of any particular man can be, supposing him to be descended from a thousand kings.



THE END.